85-1296

Supreme Court, U.S.
FILED
JAN 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO.

SUPREME COURT OF THE UNITED STATES

October Term, 1985

IN RE THE MARRIAGE OF

KURT ROSENBAUM,

Appellee,

and

JEAN ROSENBAUM,

Appellant, acting Pro Se.

ON APPEAL FROM THE APPELLATE COURT
OF ILLINOIS, FIRST DISTRICT.

APPENDIX to JURISDICTIONAL STATEMENT

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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Second Division, December 28, 1982

82-1790

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF	) Appeal from the
KURT ROSENBAUM,	) Circuit Court
	) of Cook County
Petitioner-Appellee,	)
	) Honorable
vs.	) Robert Buckley,
	) Judge Presiding
JEAN ROSENBAUM,	)
	)
Respondent-Appellant.	) C O P Y

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

This interlocutory appeal (87 Ill. 2d R. 307(a)(1)) brought by respondent, Jean Rosenbaum, involves 2 injunctions entered during the course of a suit for dissolution of marriage filed by petitioner, Kurt Rosenbaum. This is the third suit filed by petitioner against respondent on grounds of mental cruelty. (See Rosenbaum v. Rosenbaum (1976), 38 Ill. App. 3d 1, 349 N.E.2d 73.) The parties have

lived separately since October of 1965.

At respondent's request, the court entered an order restraining petitioner from hitting, striking, threatening, cursing or interfering with respondent. She then unsuccessfully moved the court to modify the order to include other elements of relief which will be specified later in connection with our analysis of the issues. She claims that the court's refusal to modify the order constituted an abuse of discretion.

Subsequently, at the request of petitioner, the court entered a preliminary injunction against respondent prohibiting her from "harassing Petitioner and interfering with Petitioner by calling his optometry office and from attempting to do so." Respondent moved that the injunction be vacated or, alternatively, modified either to direct petitioner to give her his unlisted home telephone num-

ber or to specify certain times during which she could telephone the office. The court denied the motion. On appeal, respondent argues that this injunction is unconstitutional, and that the trial court abused its discretion in entering it.

A preliminary injunction is available only in situations where an extreme emergency exists and where irreparable and serious injury will result in the absence of injunctive relief. (Dixon v. Village of Lombard (1977), 50 Ill. App. 3d 590; 365 N.E. 2d 1131.) For a preliminary injunction to issue, the movant must establish possession of a right which needs protection, immediate and irreparable injury if the injunction is denied, no adequate remedy at law and a probability of success on the merits. (Central Building & Cleaning Co., Inc. v. Vodnansky (1980), 84 Ill. App. 3d 586; 406 N.E. 2d 32.) The standard of review on appeal is

whether the trial court abused its discretion in granting or denying the request for injunctive relief. (Roche Bros. v. Garrigan (1980), 88 Ill. App. 3d 107; 410 N.E.2d 338.)

We will first consider the propriety of the trial court's refusal to modify its order restraining petitioner from hitting, striking, threatening, cursing or interfering with respondent to include other elements of relief requested by her. The following is a summarized list of the other acts which respondent wanted petitioner restrained from performing:

(1) Transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of his optometric practice, or for the absolute necessities of life, and from taking trips, vacations, traveling, etc.

(2) Filing any more divorce suits against her.

(3) Entering her apartment without her permission.

(4) Depriving her use of the family car.

(5) Preventing her from enjoying family privileges and special rates at clubs to which he belongs.

(6) Ostracizing her from family celebrations and occasions at which their children may be present.

(7) Withholding from her wedding photographs taken at the weddings of their two sons.

(8) Withholding from her invitations intended to include both husband and wife.

(9) Refusing her transportation in the family car.

With respect to the first point enumerated, the court found an insufficient factual basis for respondent's allegation that marital assets were being

dissipated. While she alleges the existence of an oral contract whereby she became half owner of all assets acquired during marriage, this dispute is one properly settled at trial. Because the movant failed to sufficiently establish an immediate dissipation of assets, there was no showing that an injunction was necessary to prevent immediate and irreparable injury.

Respondent further claims that the trial court erred in refusing to enjoin petitioner from filing any more divorce suits against her because the appellate court in Rosenbaum v. Rosenbaum (1976) 38 Ill. App. 3d 1; 349 N.E.2d 73, already decided that he did not have statutory grounds for divorce. That decision, however, does not preclude petitioner from alleging and proving that subsequent acts of respondent constitute grounds for divorce.

Neither can we say that the court erred in refusing to enjoin petitioner from en-

tering respondent's apartment without her permission. Equity will not orginarily enjoin a criminal act because the Criminal Code, itself, acts as an injunction. People v. Goldman (1972), 7 Ill. App. 3d 253; 287 N.E.2d 177.

In our judgment, the remaining elements of relief requested are not proper subjects of injunctive relief. They do not present the type of situation in which immediate and irreparable harm will result in the absence of an injunction.

Respondent next contends that the trial court abused its discretion in refusing to vacate or modify the injunction restraining her from telephoning petitioner at his office. She also challenges this injunction on constitutional grounds.

During a hearing on petitioner's motion for injunctive relief, he testified as follows:

"(S)he continuously makes telephone

> calls, sometimes four or five in succession and asks questions of which I know nothing about, how many women do you see, you are a Communist, illegitimate son of a bitch, they have involved you in the abortion racket and you are involved in the drug racket and things which have no, absolutely no sense to me. These kind of acts interfere with my practice, interferes with my conducting examinations because she (is) constantly on the phone, sometimes four or five times a day."

At the conclusion of the hearing, the trial court entered the injunction preventing respondent from harassing petitioner by telephoning him at the office. She maintains that this was an abuse of discretion on the part of the trial court because it effectively cut off all communication between the husband and wife concerning family matters, especially matters involving their children. In assessing this argument, we note that respondent and petitioner have lived separately for 17 years and that their children are adults capable of estab-

lishing a family relationship with respondent without the involvement of petitioner. In light of these facts, and petitioner's testimony, we cannot say that the trial court's action constituted an abuse of discretion.

Respondent also claims that this injunction violates her constitutional right to freedom of speech. However, an individual's right of free speech is not inherently absolute but must be considered in light of the rights of others. (Arlington Heights National Bank v. Arlington Heights Federal Savings and Loan Assn, (1967), 37 Ill. 2d 546; 229 N.E.2d 514.) The injunction under consideration did not completely prohibit respondent from communicating with petitioner. Rather it barred her from harassing him with telephone calls at his office, based upon evidence that such calls were interfering with his livelihood.

Respondent has set forth in her brief a multitude of constitutional provisions with no argument as to how they apply to the facts before us. It is well established that an appellant may not make a point by stating it without presenting arguments in support of its position. (Nicholl v. Scaletta (1982), 104 Ill. App. 3d 642; 432 N.E.2d 1267.) We therefore decline to consider the cited provisions.

Respondent's last contention is that the trial court should have disqualified itself on its own motion because its views on the subject of divorce are contrary to Illinois law. Respondent failed to raise this issue in the trial court and has therefore waived it. Sorenson v. Fio Rito (1980), 90 Ill. App. 3d 368; 413 N.E.2d 47.

Accordingly, the orders of the trial court are affirmed.

Dated at Chicago, Illinois, this 28th

day of December, 1982.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF	)	
	)	
KURT ROSENBAUM,	)	
	)	
Petitioner-Appellee	)	
	)	
and	)	NO. 82-1790
	)	
JEAN ROSENBAUM,	)	
	)	
Respondent-Appellant	)	C O P Y

ORDER

Respondent-Appellant's Petition for Rehearing is hereby denied.

(Signature)
John J. Stamos, Justice

(Signature)
Maurice Perlin, Justice

(Signature)
Allen Hartman, Justice

Dated: February 2, 1983

STATE of ILLINOIS

Office of CLERK of the SUPREME COURT

Springfield 62706

THE COURT HAS ENTERED THE FOLLOWING ORDER IN THE CASE OF: GEN. NO. 57622

In re: Jean Rosenbaum, petitioner, vs. Honorable Judge Daniel Ryan, et al., respondents.

"The motion by petitioner, pro se, for leave to file a petition for an original writ of mandamus is denied."

"The motion, by petitioner, pro se, for leave to file Report of Proceedings after disposition of motion for leave to file a petition for writ of mandamus, if allowed, is denied."

JULEANN HORNYAK, CLERK

January 11, 1983

March 5, 1985 NO. 84-489 2nd Division

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE: THE MARRIAGE OF	) Appeal from the
	) Circuit Court of
KURT ROSENBAUM,	) Cook County.
	)
Petitioner-Appellee.	)
	) Honorable
vs.	) Robert Buckley and
	) Daniel Ryan,
JEAN ROSENBAUM,	) Judges Presiding.
	)
Respondent-Appellant.	) C O P Y

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

On December 12, 1983, the circuit court of Cook County entered an order dissolving the marriage of Dr. Kurt Rosenbaum, petitioner, and Jean Rosenbaum, respondent. The order also provided for both a division of property and an award of permanent maintenance for respondent. Respondent appeals.

The circuit court's judgment followed years of marital litigation between the parties which was marked by three petitions for dissolution of marriage on grounds

of mental cruelty. The first petition, filed in the late 1960s, was denied, but in 1971 petitioner's second petition for dissolution was granted. Respondent, however, appealed that circuit court decision to this court which reversed the order of dissolution because petitioner failed to prove mental cruelty and his lack of provocation. (Rosenbaum v. Rosenbaum, (1976); 38 Ill. App. 3d 1, 349 N.E. 2d 73.) The third petition was filed on September 25, 1981.

In a judgment containing an extensive consideration of the facts of this case, the circuit court found that respondent committed repeated unprovoked acts of mental cruelty toward petitioner and declared this conduct grounds for dissolution. The judgment also details the various assets of the parties which form the bases of the court's property division and maintenance provisions. Respondent appeals from this

judgment.

I.

Proceeding pro se, respondent has filed numerous motions in this litigation, including a motion to strike petitioner's brief in the instant appeal, upon the grounds that: (1) the margins of petitioner's brief are in violation of Supreme Court Rule 344 (87 Ill. 2d R. 344); (2) no proof of service pertaining to petitioner's brief was received by respondent, also in violation of Rule 344; (3) a section of petitioner's brief does not fall within the headings allowed under Rule 341 (87 Ill. 2d R. 341); and (4) the petitioner's brief is not verified. This motion is denied.

Although adherence to the Rules is necessary to the proper administration of the court's business, the alleged defects regarding petitioner's brief do not merit the serious sanction of striking the entire brief. In light of the fact that peti-

tioner's brief is well within the page limitations set forth in Rule 341 (87 Ill. 2d R. 341), any irregularity of the margin size is insignificant. Further, neither the failure to send respondent a copy of the proof of service nor an improper section heading should be deemed fatal. Finally, there is no requirement that a brief be verified.

II.

On the merits of her appeal, Respondent maintains that the circuit court's order of dissolution of marriage on grounds of mental cruelty amounts to an abuse of discretion. She notes that the petitioner was required to prove his own lack of provocation under the Illinois Marriage and Dissolution of Marriage Act ("Act"). (Ill. Rev. Stat. 1983, ch. 40, par. 401 (2).) Relying on this court's earlier opinion in Rosenbaum v. Rosenbaum, 38 Ill. App. 3d at 13, in which it was found that

petitioner had neither alleged nor proven lack of provocation, respondent asserts that petitioner is barred by principles of res judicata and collateral estoppel from now proving his lack of provocation. In addition, respondent recites myriad allegations of petitioner's beating, abusing, threatening and cursing which she contends constitute provocation. Therefore, respondent argues that in view of our prior decision and her allegations of provocation, the circuit court's finding of mental cruelty and a lack of petitioner's provocation was an abuse of discretion.

Respondent's reliance on our prior decision for res judicata or collateral estoppel effect is misplaced. It fails to take into consideration our more recent disposition in this case in a Supreme Court Rule 23 Order (87 Ill. 2d R. 23), Rosenbaum v. Rosenbaum (Docket No. 82-1790, December 28, 1982) in which we held, inter

alia, that petitioner was not precluded from proving grounds for dissolution by subsequent acts of respondent. Thus the circuit court did not err in allowing petitioner the opportunity to prove his case.

In reviewing the court's finding that petitioner did prove repeated acts of unprovoked mental cruelty, the finding is presumed to be correct and will not be set aside on review unless it is against the manifest weight of the evidence. (In re Marriage of Mitchell (1981), 103 Ill. App. 3d 242, 246; 430 N.E. 2d 716; McGowan v. McGowan (1973), 15 Ill. App. 3d 913, 914; 305 N.E.2d 261.) Nevertheless, the judgment must be supported by positive evidence of conduct which causes embarrassment, humiliation and anguish so as to render life miserable. (McGowan v. McGowan, supra; Christian v. Christian (1979), 69 Ill. App. 3d

450; 387 N.E.2d 1254.) Here, petitioner's evidence of respondent's unfounded accusations, public confrontations, and harassing phone calls provides sufficient basis for the circuit court finding of mental cruelty. Further, petitioner's burden of proving his lack of provocation was a matter for the circuit court judge to determine. (Smith v. Smith (1977), 47 Ill. App. 3d 583, 586; 362 N.E.2d 123.) While this matter was bitterly contested, this court must not substitute its judgment for the judgment of the circuit court judge absent an abuse of discretion. (In re Marriage of Jones (1980), 90 Ill. App. 3d 95, 96; 412 N.E.2d 1122; Smith v. Smith, supra.) A thorough review of the record on appeal in this case reveals no such abuse with respect to either the question of mental cruelty or the lack of provocation, and therefore, the judgment of dissolution cannot be reversed on this basis.

Several other arguments are raised by respondent with respect to the decree of dissolution. She maintains that the circuit court should not have considered the criminal complaints that she filed against petitioner as evidence of mental cruelty because she views the complaints as statements made in judicial proceedings which cannot form the basis of a cause of action. (McDavitt v. Boyer (1897), 169 Ill. 475; 48 N.E.317.) Further, respondent contends that the petition for dissolution was not a legally valid complaint in that each count did not in itself state a cause of action (Herman v. Prudence Mutual Casualty Co. (1969), 41 Ill. 2d 468; 244 N.E.2d 809), and thus, should have been dismissed by the circuit court. Respondent also maintains that the court abused its discretion because the testimony upon which it based its decree was not credible.

Finally, she asserts that the circuit court judges who were involved in this case were not sufficiently free of prejudice so as to allow them to rule impartially and according to law. Thus, respondent concludes that on these bases the circuit court's decree of dissolution of marriage was an abuse of discretion requiring reversal.

These additional attacks on the judgment of dissolution are without merit. The petition for dissolution was a legally valid complaint for dissolution and property division, and the criminal complaints filed by respondent cannot be said to form the basis of petitioner's claim in light of the other evidence upon which to base the circuit court's finding of mental cruelty. Further, witness credibility was evaluated in the circuit court and will not be reevaluated by this court because the record

does not disclose that the circuit court's findings were against the manifest weight of the evidence. (In re Marriage of Jones, supra; Tandy v. Tandy (1976), 42 Ill. App. 3d 87, 89; 355 N.E.2d 585.) The record also fails to reveal any prejudice on the part of the circuit court judges toward respondent, and therefore the judgment of dissolution cannot be disturbed on this basis.

III.

Respondent's last argument on appeal is that the circuit court's property division and award of maintenance reflects an abuse of discretion. She identities a variety of alleged abuses including the court's failure to enforce discovery, its refusal to consider an alleged oral contract, its failure to award her temporary alimony, a vacation, and funds for dental care, its failure to refer the parties to a reconciliation service, and its infringement on

her right to cross-examine. Respondent contends that these abuses resulted in a property distribution which is unfair to her and contrary to law.

The standard of review of a property distribution is whether there has been an abuse of discretion such that no reasonable person could take the view of the circuit court. (In re Marriage of Lee (1979), 78 Ill. App. 3d 1123, 1127; 398 N.E. 2d 126; In re Marriage of Cihak (1981), 92 Ill. App. 3d 1123, 1125; 416 N.E.2d 701.) In addition, appellate courts find that a just division of property does not require the property to be divided equally. (In re Marriage of Caldwell (1984), 124 Ill. App. 3d 898, 901; 465 N.E.2d 523; In re Marriage of Greenberg (1981), 102 Ill. App. 3d 938, 945-46; 429 N.E.2d 1334.) Here, a review of the record and the circuit court's judgment reveals neither an abuse of dis-

cretion nor an unjust property division.

The record discloses that a vast amount of evidence was presented in the circuit court on financial matters, including evidence of the following: the assets of the parties at their separation; petitioner's provisions for the education, housing, medical and living expenses of the parties children since the late 1960s; the assets the parties received from the partition of the marital home by a prior decree; respondent's income as a part-time teacher; petitioner's income; various bank accounts which petitioner held as trustee for the parties' children; the value of petitioner's co-op apartment; the value of petitioner's interest in the shopping center in which he had his optometry practice; petitioner's stock holdings; his bank accounts and certificates of deposit; the value of petitioner's office equipment and inventory; his auto-

mobile and personal effects; petitioner's retirement fund; life insurance policies; bonds; social security benefits; and inheritances.

The circuit court judgment states that it was rendered after a full consideration of testimony, exhibits and argument. It makes detailed findings with respect to the aforementioned evidence and states that the court examined the evidence in light of the Act's guidelines for dividing property. (Ill. Rev. Stat. 1983, ch. 40, par. 503(d).) The court declared that it placed particular importance on the subsections of the Act pertaining to the contribution or dissipation of each party in the acquisition and retention of assets; the value of the property set aside for each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, employability, and needs of each spouse; the opportunity

for future acquisition of assets; and the tax consequences of the property division. (Ill. Rev. Stat. 1983, ch. 40, par. 503 (d)(1)(2)(3)(7)(10)(11).) The evidence in this case revealed, and the circuit court specifically found, that petitioner accumulated the bulk of his assets through his own efforts subsequent to the parties' informal separation in 1965, that since that time respondent has been self-sufficient, and that her health is good enough to allow her to continue to earn a living. In light of these factors, although the property division awards the majority of the property to petitioner, we are unable to find that no reasonable person could have found as the circuit court did.

With respect to respondent's specific allegations of abuses of discretion, we find that although production of certain objects of discovery may have been slow, it is evident that respondent ultimately

received adequate production. Further, the record reveals that respondent's cross-examination of witnesses was curtailed by the court only after repeated admonishments regarding relevancy. In addition, the circuit court was not bound to refer the parties to a reconciliation service particularly in view of the fact that they had not lived together since 1965. Finally, the court was not required to make any findings or provisions regarding alleged oral contracts, temporary alimony, vacations or dental care. (In re Marriage of Voight (1982), 111 Ill. App. 3d 623, 628; 444 N.E.2d 694.) Thus, a finding of abuse of circuit court discretion is not warranted in this case with respect to its property division and award of maintenance.

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 5th

day of March, 1985.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

- - - - -

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF	)	
	)	
KURT ROSENBAUM,	)	
	)	
Petitioner-Appellee,	)	
	)	
and	)	NO. 84-489
	)	
JEAN ROSENBAUM,	)	
	)	
Respondent-Appellant.	)	C O P Y

ORDER

Appellant's Petition for Rehearing is hereby denied.

(Signed) _____
John J. Stamos, presiding Justice

(Signed) _____
Maurice Perlin, Justice

(Signed) _____
Allen Hartman, Justice

Dated: April 16, 1985.

APPELLATE COURT OF ILLINOIS, 1ST DIST.

IN RE THE MARRIAGE OF)
)
KURT ROSENBAUM,)
)
Petitioner-Appellee)
)
and) NO. 84-0489
)
JEAN ROSENBAUM,)
) C O P Y
Respondent-Appellant,)
)
acting Pro Se)

ORDER

This cause coming on to be heard this day upon JEAN ROSENBAUM, Appellant's MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR REHEARING, and the Court having been advised in the premises;

IT IS HEREBY ORDERED:

The MOTION FOR RECONSIDERATION OF DENIAL OF PETITION FOR REHEARING is hereby

ALLOWED _____ DENIED X

John J. Stamos, P.J.

ENTERED: Maurice Perlin

May 7, 1985 Allen Hartman

STATE OF ILLINOIS

SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September, 1985.

Present: William G. Clark, Chief Justice

Justice Daniel P. Ward) FILED: APPELLATE
Justice Howard C. Ryan) COURT, 1ST DIST.
Justice Seymour Simon) November 15, 1985
Justice Joseph H. Goldenhersh
Justice Thomas J. Moran
Justice Ben Miller

C O P Y

On the second day of October, 1985, the Supreme Court entered the following judgment:

No. 61917

Kurt Rosenbaum,	Petition for Leave
Respondent	to Appeal from
v.	Appellate Court,
Jean Rosenbaum,	First District
Petitioner	1-84-0489

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this twelfth day of November, 1985.

JULEANN HORNYAK, Clerk
Supreme Court of the State of
Illinois.

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

November 12, 1985

COPY

Ms. Jean Rosenbaum, 1354 W. Greenleaf Street, Chicago, Illinois 60626.

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent

v. Jean Rosenbaum, petitioner.

Motion by petitioner, pro se, for leave to file a MOTION for reconsideration of the order denying petition for leave to appeal. Motion denied.

Motion by petitioner, pro se, for an amended October 2, 1985 order. Motion denied.

Motion by petitioner, pro se, for stay of mandate pending the timely filing and disposition of a petition

for writ of certiorari in the United States Supreme Court. Motion denied.

Motion by petitioner, pro se, for leave to file alleged political activity affidavit. Motion denied.

cc Berman, Roberts & Kelly

JH/dem

NO. 84-0489

Appeal to the

SUPREME COURT OF THE UNITED STATES

From the

APPELLATE COURT OF ILLINOIS, 1ST DISTRICT

IN RE THE MARRIAGE OF	) Appeal to the Appellate Court of
KURT ROSENBAUM,	) Illinois, First
	) District, from
Petitioner-Appellee	) the Circuit Court
	) of Cook County,
and	) Illinois; Domes-
	) tic Relations Di-
JEAN ROSENBAUM,	) vision.
	)
Respondent-Appellant,	) Hon. Robert Buck-
	) ley, Pre-Trial
acting Pro Se	) Judge Presiding.
	)
	) Hon. Daniel Ryan,
	) Trial Judge Pre-
(Filed Appellate Court	) siding.
1st Dist., Nov. 22,	)
1985).	) C O P Y

NOTICE OF FILING

TO: (1) Edward A. Berman, Attorney, 35 East Wacker Drive, #3400; Chicago, Illinois 60601; c/o Berman, Roberts & Kelly.

(2) Clerk of the Supreme Court of Illinois; Supreme Court Building; Springfield, Illinois 62706.

On November 22, 1985, I shall file with

the Appellate Court of Illinois, First District, Richard J. Daley Center, Clark & Randolph Streets, Chicago, Illinois, a NOTICE OF APPEAL (to the Supreme Court of of the United States), a copy of which is attached hereto and herewith served upon you.

(Signature)
JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

PROOF OF SERVICE BY MAILING

I, JEAN ROSENBAUM, being first duly sworn upon oath, depose and state I served the foregoing Notice of Filing with attached NOTICE OF APPEAL (to the Supreme Court of the United States), by placing a copy in envelopes addressed to:

(1) Edward A. Berman, Attorney; 35 East Wacker Drive, #3400; Chicago, Illinois 60601; c/o Berman, Roberts & Kelly; and

(2) Clerk of the Supreme Court of Illi-

nois; Supreme Court Building; Springfield, Illinois 62706;

and depositing said envelopes in the U. S. Mail at the Richard J. Daley Center, Clark & Randolph Streets, Chicago, Illinois, before the hour of 4:00 PM on November 22, 1985, proper first-class postage prepaid.

(Signature)
JEAN ROSENBAUM

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 22nd day of November, 1985.

(Signature)
Notary Public

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

NO. 84-0489

Appeal to the

SUPREME COURT OF THE UNITED STATES

From the

APPELLATE COURT OF ILLINOIS, 1ST DISTRICT

IN RE THE MARRIAGE OF	) Appeal to the Appellate Court of
KURT ROSENBAUM,	) Illinois, First
Petitioner-Appellee	) District, from
and	) the Circuit Court of Cook County,
JEAN ROSENBAUM,	) Illinois; Domestic Relations Division.
Respondent-Appellant,	) Hon. Robert Buckley, Pre-Trial
acting Pro Se	) Judge Presiding.
(Filed Appellate Court 1st Dist., Nov. 22, 1985).	) Hon. Daniel Ryan, Trial Judge Presiding.
	) C O P Y

NOTICE OF APPEAL

JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se in the above-captioned cause, hereby appeals to the Supreme Court of the United States, from the ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23 entered

by the Appellate Court of Illinois, First District, Second Division, on March 5, 1985. This ORDER is attached hereto and made a part hereof as EXHIBIT "A".

Appellant's timely-filed PETITION FOR APPEAL AS A MATTER OF RIGHT, Or in the Alternative, PETITION FOR LEAVE TO APPEAL addressed to the Supreme Court of Illinois (docketed as No. 61917), was denied by that Court on October 2, 1985, but the Mandate of that Court was not issued to the Appellate Court until November 12, 1985, due to numerous outstanding matters (the Illinois Supreme Court Mandate is attached hereto and made a part hereof as EXHIBIT "B"). Jean Rosenbaum, the Petitioner in Illinois Supreme Court, filed a MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION of the Order denying the PETITION FOR LEAVE TO APPEAL, which was denied by the Illinois Supreme Court in its Order entered November 12, 1985 (this

Order is attached hereto and made a part hereof as EXHIBIT "C"). Appellant has attempted to clarify and correct the paragraph marked (b) of this Order with the Clerk of the Illinois Supreme Court, as JEAN ROSENBAUM did NOT commit herself to the type of appeal or review she would seek from the U. S. Supreme Court, but thus far has not been successful. The last Order received by Appellant from the Illinois Supreme Court is dated November 18, 1985 (see EXHIBIT "D" attached hereto and made a part hereof). It was not feasible to file a Notice of Appeal earlier as all outstanding matters before the Illinois Supreme Court required its continuing jurisdiction, and Appellant attempted strongly to solve all the inequities in this case in the lower Courts.

Pursuant to United States Supreme Court Rule 10, it is stated:

1. The appeal of Jean Rosenbaum to the

U. S. Supreme Court is taken pursuant to 28 USCA 1257 (2); 28 USCA 2101 (c); 28 USCA 2103; and 28 USCA 2106.

2. Jean Rosenbaum appeals the final Order entered by the Appellate Court of Illinois, First District, on March 5, 1985 upon its completion of its review, entitled ORDER DISPOSING OF APPEAL UNDER SUPREME COURT RULE 23. Appellate Court denied Appellant's PETITION FOR REHEARING, and her request for a genuine OPINION, because of the importance of the issues presented. The review was of the trial court JUDGMENT OF DISSOLUTION OF MARRIAGE, a 20-page document which appears in the Appellate Record, although it is too long to attach hereto as an Exhibit. The JUDGMENT OF DISSOLUTION is cumbersome, contradictory, highly slanderous to Wife, and inaccurate in the "facts" it presents. Appellate Court, however, approved it in entirety

without change.

3. The parts of the Appellate ORDER DISPOSING OF APPEAL appealed from are:

a) Part I, pages 2-3 thereof, wherein the defects in Petitioner's Brief (Kurt Rosenbaum) are deemed insufficient to strike it.

b) Part II, pages 3, 4, 5 and 6, pertaining to the divorce awarded to Kurt Rosenbaum from his Wife in the 36-year old marriage, Jean Rosenbaum, on grounds of mental cruelty, despite the fact she is the mother of his three children. The inaccurate assertation on Page 3 that "Respondent's reliance on our prior decision for res judicata or collateral estoppel effect is misplaced" is appealed, as it is not true. On page 4, it is difficult to understand how Appellate Court could affirm the trial court decision that Petitioner proved the Wife's repeated unprovoked acts of

mental cruelty when, in fact, the Husband admitted he refused to talk to the Wife at all times with few exceptions, that he refused to support her for many years despite his own high standard of living, that he refused to include her in any family occasions involving the children or other relatives, but brought other women to these occasions, etc. She testified that he frequently swore at her when she appeared, insulted and threatened her, hit, struck and kicked her, causing her humiliation and anguish. The testimony and facts brought out that Husband has NOT MET ONE of his husbandly obligations to the Wife for many, many years (except payment of Blue Cross). All Appellate conclusions on page 4 are under appeal, and its conclusions on page 6 also. Its award of a divorce to the Husband on grounds of mental cruelty, through its affirmation of the trial court judg-

ment, is strongly appealed.

c) Part III, pages 6 through 9, is appealed in entirety (finances and miscellaneous matters). Appellate Court has ignored all of Wife's valid claims and charges, and affirmed the trial court judgment on property distribution and all miscellaneous matters. Despite present Illinois family law which encourages a near-equal distribution of marital funds to the spouses, Jean Rosenbaum, despite her very limited financial resources, was awarded only about 11% of the marital property, despite the fact she no longer has a home (she was partitioned out of it by Husband), and Husband lives in a luxurious cooperative apartment. Marital funds eventually transferred or put in the children's names were deemed to belong to the children (all now past 30 years old), but left in the control of Husband, who can dispose of said

funds as he wishes, and they can be dissipated by strangers should he remarry. Appellate Court has evaded Wife's charge that this strongly resembles a "con" scheme. Although Husband has spent over $5,000 in dental fees from marital funds, Wife was refused payment of her own dental fee of about $1,500.00 from the same marital funds by the Court (affirmed by Appellate Court), and all financial matters are under appeal, <u>if the divorce is not reversed</u>. Wife's mediocre health has been ignored by the Courts below, and she should be retired, but cannot because of the inequitable financial award. Highly inaccurate facts are cited in Part III of the Appellate ORDER, all under appeal.

d) Also appealed are matters briefed in the Appellate Brief of Jean Rosenbaum, but simply ignored and not ruled on by the Appellate Court, which intensely required their consideration. These in-

clude, but are not limited to, the following:

1) The refusal of trial court to enter a Declaratory Judgment to establish specifically what the rights of a Wife are and to simplify the litigation, as Jean Rosenbaum requested;

2) The constitutionality of the comparatively new statute in Illinois family law which permits one spouse to divorce the other after a two-year separation, irregardless of children and the fact it is contested, Ill. Rev. Stat. (1983), Ch. 40, Amendment to Sec. 401, otherwise known as Public Act 83-954. Fraud in its passage is alleged by Appellant.

3) If Public Act 83-954 was used when Appellate Court affirmed the trial court decision granting Husband a divorce and, if so, whether this was proper, and in accordance with law.

NOT APPEALED is the award of permanent

maintenance to the Wife, in addition to a cash award; however, the amount of the permanent maintenance and its reduction after four years is appealed as insufficient, as is the cash award, and the amount of life insurance carried by Husband to which Wife is beneficiary (based on ancient economy). The issue of a Wife's support without legal separation was also presented but not ruled upon (this is a Constitutional issue) by Appellate Court, and is to be considered under appeal presently. Injunction issues are appealed.

With this Notice of Appeal, Jean Rosenbaum requests that the divorce awarded to Kurt Rosenbaum on grounds of mental cruelty be reversed and the case dismissed. If the cause is not reversed and dismissed, Appellant asks for such other relief as Jean Rosenbaum may be deemed entitled to by the Court. She further asks that she receive a more equitable portion of the

marital property (which is in excess of $600,000.00), and may be found to be more with further discovery. She asks for a proper home, and adequate hospitalization and medical coverage, as well as retroactive temporary alimony, etc.

(Signature)
JEAN ROSENBAUM, Respondent-Appellant, acting Pro Se

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Respondent-Appellant, acting Pro Se in the aforestated cause, that she has read the foregoing NOTICE OF APPEAL by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

(Signature)
JEAN ROSENBAUM

Subscribed and sworn to before me, a

Notary Public of the State of Illinois, County of Cook, this 22nd day of November, 1985.

(Signature)
Notary Public

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

March 5, 1985 Second Division

NO. 84-0489

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

IN RE: THE MARRIAGE OF	) Appeal from the
KURT ROSENBAUM,	) Circuit Court of
Petitioner-Appellee.	) Cook County.
vs.	) Honorable
	) Robert Buckley and
JEAN ROSENBAUM,	) Daniel Ryan,
Respondent-Appellant.	) Judges Presiding.

COPY

ORDER DISPOSING OF APPEAL

UNDER SUPREME COURT RULE 23

On December 12, 1983, the circuit court of Cook County entered an order dissolving the marriage of Dr. Kurt Rosenbaum, petitioner, and Jean Rosenbaum, respondent. The order also provided for both a division of property and an award of permanent maintenance for respondent. Respondent appeals. The circuit court's judgment followed

EXHIBIT "A"

years of marital litigation between the parties which was marked by three petitions for dissolution of marriage on grounds of mental cruelty. The first petition, filed in the late 1960s, was denied, but in 1971 petitioner's second petition for dissolution was granted. Respondent, however, appealed that circuit court decision to this court which reversed the order of dissolution because petitioner failed to prove mental cruelty and his lack of provocation. (Rosenbaum v. Rosenbaum, (1976); 38 Ill. App. 3d 1, 349 N.E. 2d 73.) The third petition was filed on September 25, 1981.

In a judgment containing an extensive consideration of the facts of this case, the circuit court found that respondent committed repeated unprovoked acts of mental cruelty toward petitioner and declared this conduct grounds for dissolution. The judg-

ment also details the various assets of the parties which form the bases of the court's property division and maintenance provisions. Respondent appeals from this judgment.

I.

Proceeding pro se, respondent has filed numerous motions in this litigation, including a motion to strike petitioner's brief in the instant appeal, upon the grounds that: (1) the margins of petitioner's brief are in violation of Supreme Court Rule 344 (87 Ill. 2d R. 344); (2) no proof of service pertaining to petitioner's brief was received by respondent, also in violation of Rule 344; (3) a section of petitioner's brief does not fall within the headings allowed under Rule 341 (87 Ill. 2d R. 341); and (4) the petitioner's brief is not verified. This motion is denied.

Although adherence to the Rules is neces-

sary to the proper administration of the court's business, the alleged defects regarding petitioner's brief do not merit the serious sanction of striking the entire brief. In light of the fact that petitioner's brief is well within the page limitations set forth in Rule 341 (87 Ill. 2d R. 341), any irregularity of the margin size is insignificant. Further, neither the failure to send respondent a copy of the proof of service nor an improper section heading should be deemed fatal. Finally, there is no requirement that a brief must be verified.

II.

On the merits of her appeal, Respondent maintains that the circuit court's order of dissolution of marriage on grounds of mental cruelty amounts to an abuse of discretion. She notes that the petitioner was required to prove his own lack of pro-

vocation under the Illinois Marriage and Dissolution of Marriage Act ("Act"). (Ill. Rev. Stat. 1983, ch. 40, par. 401 (2).) Relying on this court's earlier opinion in Rosenbaum v. Rosenbaum, 38 Ill. App. 3d at 13, in which it was found that petitioner had neither alleged nor proven lack of provocation, respondent asserts that petitioner is barred by principles of res judicata and collateral estoppel from now proving his lack of provocation. In addition, respondent recites myriad allegations of petitioner's beating, abusing, threatening and cursing which she contends constitute provocation. Therefore, respondent argues that in view of our prior decision and her allegations of provocation, the circuit court's finding of mental cruelty and a lack of petitioner's provocation was an abuse of discretion.

Respondent's reliance on our prior de-

cision for res judicata or collateral estoppel effect is misplaced. It fails to take into consideration our more recent disposition in this case in a Supreme Court Rule 23 Order (87 Ill. 2d R. 23), Rosenbaum v. Rosenbaum (Docket No. 82-1790, December 28, 1982) in which we held, inter-alia, that petitioner was not precluded from proving grounds for dissolution by subsequent acts of respondent. Thus the circuit court did not err in allowing petitioner the opportunity to prove his case.

In reviewing the court's finding that petitioner did prove repeated acts of unprovoked mental cruelty, the finding is presumed to be correct and will not be set aside on review unless it is against the manifest weight of the evidence. (In re Marriage of Mitchell (1981), 103 Ill. App. 3d 242, 246; 430

EXHIBIT "A"

N.E. 2d 716; McGowan v. McGowan (1973) 15 Ill. App. 3d 913, 914; 305 N.E.2d 261.) Nevertheless, the judgment must be supported by positive evidence of conduct which causes embarrassment, humiliation and anguish so as to render life miserable. (McGowan v. McGowan, supra; Christian v. Christian (1979), 69 Ill. App. 3d 450; 387 N.E.2d 1254.) Here, petitioner's evidence of respondent's unfounded accusations, public confrontations, and harassing phone calls provides sufficient basis for the circuit court finding of mental cruelty. Further, petitioner's burden of proving his lack of provocation was a matter for the circuit court judge to determine. (Smith v. Smith (1977), 47 Ill. App. 3d 583, 586; 362 N.E.2d 123.) While this matter was bitterly contested, this court must not substitute its judgment for the judgment of the circuit court

judge absent an abuse of discretion. (In re Marriage of Jones (1980), 90 Ill. App. 3d 95, 96; 412 N.E.2d 1122; Smith v. Smith, supra.) A thorough review of the record on appeal in this case reveals no such abuse with respect to either the question of mental cruelty or the lack of provocation, and therefore, the judgment of dissolution cannot be reversed on this basis.

Several other arguments are raised by respondent with respect to the decree of dissolution. She maintains that the circuit court should not have considered the criminal complaints that she filed against petitioner as evidence of mental cruelty because she views the complaints as statements made in judicial proceedings which cannot form the basis of a cause of action. (McDavitt v. Boyer (1897), 169 Ill. 475; 48 N.E.317.) Fur-

ther, respondent contends that the petition for dissolution was not a legally valid complaint in that each count did not in itself state a cause of action (Herman v. Prudence Mutual Casualty Co. (1969), 41 Ill. 2d 468; 244 N.E.2d 809), and thus, should have been dismissed by the circuit court. Respondent also maintains that the court abused its discretion because the testimony upon which it based its decree was not credible. Finally, she asserts that the circuit court judges who were involved in this case were not sufficiently free of prejudice so as to allow them to rule impartially and according to law. Thus, respondent concludes that on these bases the circuit court's decree of dissolution of marriage was an abuse of discretion requiring reversal.

These additional attacks on the judg-

ment of dissolution are without merit. The petition for dissolution was a legally valid complaint for dissolution and property division, and the criminal complaints filed by respondent cannot be said to form the basis of petitioner's claim in light of the other evidence upon which to base the circuit court's finding of mental cruelty. Further, witness credibility was evaluated in the circuit court and will not be reevaluated by this court because the record does not disclose that the circuit court's findings were against the manifest weight of the evidence. (In re Marriage of Jones, supra; Tandy v. Tandy (1976), 42 Ill. App. 3d 87, 89; 355 N.E.2d 585.) The record also fails to reveal any prejudice on the part of the circuit court judges toward respondent, and therefore the judgment of dissolution cannot be disturbed on this

basis.

III.

Respondent's last argument on appeal is that the circuit court's property division and award of maintenance reflects an abuse of discretion. She identifies a variety of alleged abuses including the court's failure to enforce discovery, its refusal to consider an alleged oral contract, its failure to award her temporary alimony, a vacation, and funds for dental care, its failure to refer the parties to a reconciliation service, and its infringement on her right to cross-examine. Respondent contends that these abuses resulted in a property distribution which is unfair to her and contrary to law.

The standard of review of a property distribution is whether there has been an abuse of discretion such that no reasonable person could take the view of the

circuit court. (In re Marriage of Lee (1979), 78 Ill. App. 3d 1123, 1127; 398 N.E. 2d 126; In re Marriage of Cihak (1981), 92 Ill. App. 3d 1123, 1125; 416 N.E.2d 701.) In addition, appellate courts find that a just division of property does not require the property to be divided equally. (In re Marriage of Caldwell (1984), 124 Ill. App. 3d 898, 901; 465 N.E.2d 523; In re Marriage of Greenberg (1981), 102 Ill. App. 3d 938, 945-46; 429 N.E.2d 1334.) Here, a review of the record and the Circuit court's judgment reveals neither an abuse of discretion nor an unjust property division.

The record discloses that a vast amount of evidence was presented in the circuit court on financial matters, including evidence of the following: the assets of the parties at their separation; petitioner's provisions for the education, housing,

EXHIBIT "A"

medical and living expenses of the parties' children since the late 1960s; the assets the parties received from the partition of the marital home by a prior decree; respondent's income as a part-time teacher; petitioner's income; various bank accounts which petitioner held as trustee for the parties' children; the value of petitioner's co-op apartment; the value of petitioner's interest in the shopping center in which he had his optometry practice; petitioner's stock holdings; his bank accounts and certificates of deposit; the value of petitioner's office equipment and inventory; his automobile and personal effects; petitioner's retirement fund; life insurance policies; bonds; social security benefits; and inheritances.

The circuit court judgment states that it was rendered after a full consideration

of testimony, exhibits and argument. It makes detailed findings with respect to the aforementioned evidence and states that the court examined the evidence in light of the Act's guidelines for dividing property. (Ill. Rev. Stat. 1983, ch. 40, par. 503(d).) The court declared that it placed particular importance on the subsections of the Act pertaining to the contribution or dissipation of each party in the acquisition and retention of assets; the value of the property set aside for each spouse; the duration of the marriage; the age, health, station, occupation, amount and sources of income, employability, and needs of each spouse; the opportunity for future acquisition of assets; and the tax consequences of the property division. (Ill. Rev. Stat. 1983, ch. 40, par. 503 (d)(1)(2)(3)(7)(10)(11).) The evidence in this case revealed, and the circuit

court specifically found, that petitioner accumulated the bulk of his assets through his own efforts subsequent to the parties' informal separation in 1965, that since that time respondent has been self-sufficient, and that her health is good enough to allow her to continue to earn a living. In light of these factors, although the property division awards the majority of the property to petitioner, we are unable to find that no reasonable person could have found as the circuit court did.

With respect to respondent's specific allegations of abuses of discretion, we find that although production of certain objects of discovery may have been slow, it is evident that respondent ultimately received adequate production. Further, the record reveals that respondent's cross-examination of witnesses was curtailed by the court only after repeated admonish-

ments regarding relevancy. In addition, the circuit court was not bound to refer the parties to a reconciliation service particularly in view of the fact that they had not lived together since 1965. Finally, the court was not required to make any findings or provisions regarding alleged oral contracts, temporary alimony, vacations or dental care. (In re Marriage of Voight (1982), 111 Ill. App. 3d 623, 628; 444 N.E.2d 694.) Thus, a finding of abuse of circuit court discretion is not warranted in this case with respect to its property division ad award of maintenance.

For the foregoing reasons, the judgment of the Circuit court of Cook County is affirmed.

Dated at Chicago, Illinois, this 5th day of March, 1985.

STAMOS, P. J., PERLIN and HARTMAN, JJ.

EXHIBIT "A"

STATE OF ILLINOIS SUPREME COURT

At a term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of September, 1985.

Present: William G. Clark, Chief Justice

Justice Daniel P. Ward)
Justice Howard C. Ryan)
Justice Seymour Simon)
Justice Joseph H. Goldenhersh
Justice Thomas J. Moran
Justice Ben Miller

FILED: APPELLATE COURT, 1ST DIST. November 15,1985

C O P Y

On the second day of October, 1985, the Supreme Court entered the following judgment:

No. 61917

Kurt Rosenbaum,
Respondent
v.
Jean Rosenbaum,
Petitioner

Petition for Leave to Appeal from Appellate Court, First District 1-84-0489

EXHIBIT "B"

The Court having considered the Petition for Leave to Appeal and being fully advised of the premises, the Petition for Leave to Appeal is DENIED.

As Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order in this case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this twelfth day of November, 1985.

JULEANN HORNYAK, Clerk
Supreme Court of the State of
Illinois.

EXHIBIT "B"

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

JH/dem November 12, 1985

"Ms. Jean Rosenbaum
1354 W. Greenleaf St.
Chicago, IL. 60626"

C O P Y

THE COURT HAS TODAY ENTERED THE FOLLOWING

ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent, v.

Jean Rosenbaum, petitioner.

"Motion by petitioner, pro se, for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Motion denied."

"Motion by petitioner, pro se, for an amended October 2, 1985 order. Motion denied."

"Motion by petitioner, pro se, for stay of mandate pending the timely filing and disposition of a petition for writ of certiorari in the United States Supreme Court. Motion denied."

"Motion by petitioner, pro se, for leave to file alleged political activity affidavit. Motion denied."

cc: Berman, Roberts & Kelly EXHIBIT "C"

STATE OF ILLINOIS

SUPREME COURT CLERK

Supreme Court Building

Springfield 62706

November 18, 1985

C O P Y

Ms. Jean Rosenbaum
1354 West Greenleaf Street
Chicago, IL. 60626

"THE COURT HAS TODAY ENTERED THE FOLLOW-ING ORDER IN THE CASE OF

No. 61917 - Kurt Rosenbaum, respondent,

v. Jean Rosenbaum, petitioner.

Motion by petitioner, pro se. for a supervisory order. Motion denied. Simon, J., took no part."

JH:sdl

cc Berman, Roberts & Kelly

EXHIBIT "D"

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION.

IN RE THE MARRIAGE OF	(ENTERED:
KURT ROSENBAUM,	December 16,
Petitioner,	1983;
vs.	Judge Ryan.)
JEAN ROSENBAUM,	NO. 81 D 22050
Respondent,	
acting Pro Se.	C O P Y

JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS CAUSE having been assigned for trial and having come on to be heard as a contested matter on the grounds for dissolution of the parties' marriage as alleged by KURT ROSENBAUM, petitioner, in his Petition for Dissolution of Marriage filed herein, and upon the response thereto of the respondent, JEAN ROSENBAUM, on all property rights arising out of this

marriage, and the court having heard the testimony of the parties and their respective witnesses over a period of sixteen months and having considered the exhibits introduced in evidence and the arguments of petitioner's counsel and of the respondent, pro se, and the court now being otherwise fully advised in the premises, FINDS AS FOLLOWS:

1. That petitioner, KURT ROSENBAUM, and the respondent, JEAN ROSENBAUM, were residents of the State of Illinois on the date this instant proceeding was commenced, and that each party has maintained their respective residences within this State for a period in excess of ninety (90) days immediately and continuously preceding the Findings made herein.

2. That the court has jurisdiction of the subject matter hereof and the parties hereto.

3. That the parties were lawfully joined

in marriage in Chicago, Cook County, Illinois on June 27, 1948.

4. That three children were born to the parties, namely: JAY ROSENBAUM, born August 3, 1949; RICHARD ROSENBAUM, born November 9, 1951; and JODY ROSENBAUM, born March 23, 1954, all of whom are emancipated. No children were adopted. The respondent is not now pregnant.

5. That the parties ceased cohabitating together as husband and wife in the Fall of 1965, and have not cohabitated as husband and wife since that date to the present time; the parties have been living separate and apart from one another since that time, without fault or provocation on the part of the petitioner.

6. The petitioner, KURT ROSENBAUM, has proved from the testimony of the parties, testimony of witnesses, and the demeanor and conduct of the respondent, by a preponderance of the evidence that respon-

dent, JEAN ROSENBAUM, has been guilty of extreme and repeated mental cruelty toward the petitioner without any reasonable cause or provocation on petitioner's part.

FACTS AND BACKGROUND

1. At the time of the separation of the parties in October, 1965, the parties had acquired assets through their joint efforts valued at approximately $35,000, exclusive of the marital home which was later sold and divided between the parties pursuant to court order. (See infra) Some of these assets were jointly held, such as the stock interest in the Keystone Funds, still retained in the joint names of the parties, while other assets were later dissipated and expended by the parties during their separation eighteen years ago for living expenses. At the time of separation, the financial interest and equity of the petitioner in the 53rd-

Woodlawn-Kimbark Shopping Center, Inc. was approximately $3,000 since the equity of the parties was then encumbered by substantial borrowings.

2. Almost all of petitioner's present assets were accumulated after the separation of the parties. It cannot be said, nor was it so proved, that the respondent contributed to the petitioner's acquisition of assets or made a significant contribution to raising the children and as a homemaker; actually, the youngest child, Jody, went to live with petitioner around 1968 at age 14. The court further finds that the conduct of the respondent substantially hindered the acquisition of assets by petitioner and caused him great emotional and mental distress, together with large financial expenses, including attorneys' fees incurred in this cause and prior actions.

3. Since 1965, petitioner has contri-

buted substantially all of the cost of education, housing, medical expenses, and living expenses of the three children of the parties and has, in addition, otherwise made a major contribution to their welfare and well-being, so that the children are today independent of the need of any finances from their parents. Respondent has not aided in this consequence.

4. Since the separation of the parties in October, 1965, respondent has supported herself through her own efforts, although petitioner paid the mortgage on the parties' house, paid some of her joint income tax liabilities over the years, and provided her with Blue Cross and Blue Shield medical insurance at a yearly cost of over $1,500.00. Petitioner has not paid respondent direct support for over ten years, nor has respondent, until recently and in this case, ever requested temporary maintenance, support and her

dental expenses, in any court proceeding.

5. The facts contained in the four opinions of the Illinois Appellate Court, First District, Rosenbaum v. Rosenbaum, 38 Ill. App. 3d 1; 349 N.E.2d 73 (1976); 65 Ill. App. 3d 228; 382 N.E. 2d 270 (1978); 94 Ill. App. 3d 352 (1981), Order Disposing of Appeal Under Supreme Court Rule 23, No. 82-1790, December 28, 1982, and those presented here at the trial of this cause confirm these findings and provide a factual background of which this court takes judicial notice. This cause is singularly unique and unprecedented because of the facts contained in those appeals, the over 18 year separation of the parties, respondent's pro se representation, the large amount of hours she has and does expend on this cause, the number and nature of the contested issues, the constitutional arguments raised, and the myriad matters presented to the court,

especially by respondent.

6. Respondent, in addition to being self-supporting because of her earnings as a part-time teacher with the Chicago Board of Education of approximately $8,000 per year gross income, has income from property distributed to her through a prior decree of partition in which she received the approximate sum of $20,000.00, which according to the testimony has now grown to the approximate sum of $32,000, and has inherited property from both her Aunt and Mother; the respondent thus has substantial assets in her own name totaling approximately $66,000.00. Respondent also has acquired furniture, furnishings, clothing and personal effects over the pre and post separation years.

7. Furthermore, as noted above, respondent has and does spend an extremely large amount of time on this case including her appeals representing herself pro se, and

in pursuing petitioner at his office, on the telephone and at the tennis court before enjoined by order of court, but with the entry of a final order in this cause, she will undoubtedly have substantial free time to pursue her livelihood and to increase her earnings.

8. Property owned by the children of the parties, or in which they are the beneficial owners, include the following:

8.1: Talman Home Federal Savings & Loan Association, petitioner custodian for Jody Rosenbaum ($10,349.65) and for Jay Rosenbaum ($10,782.73).

8.2: American National Bank & Trust Company of Chicago, petitioner Trustee for Jody Rosenbaum ($22,337.38).

8.3: Bank of Commerce & Industry, petitioner Trustee for Jody, Richard and Jay Rosenbaum ($11,114.00)

8.4: Calumet National Bank, petitioner, as Trustee for Jay Rosenbaum, Richard

Rosenbaum, and Jody Rosenbaum, Jan. 10, 1983 ($30,000).

8.5: The Boatmen's National Bank of St. Louis, petitioner Trustee for Jay, Richard or Jody Rosenbaum, Feb. 18, 1983, ($65,268.22).

8.6: Amalgamated Bank, parties are Trustees for children ($2,323.57).

9. Property of the petitioner acquired in the above described partition proceeding was approximately $30,000.00 and, together with interest earned thereon to-date at the Calumet National Bank and transferred to the Stein Roe & Farnham Bond Fund is at least $46,711.43, which is non-marital, having been previously distributed pursuant to order or court. (See Rosenbaum v. Rosenbaum, 65 Ill. App. 3d 228.) Petitioner also inherited 892.34 British pounds on deposit at Britiannia Building Society in England valued at about $1,338.

10. Property acquired and owned by the petitioner either in his own name or jointly with one or more of the children of the parties deemed "marital property" includes the following assets and evaluations, established by competent evidence before this court over the course of this lengthy proceeding, thus rendering the evaluations only approximately at given points of time:

10.1: Cooperative at 1200 East 53rd Chicago, Illinois, ($18,000).[1]

10.2: Apartment 9F, co-op at 5532 South Shore Drive, Chicago, Illinois, ($37,500).

10.3: NCR Corp., 11.11 shares common stock, value ($1,375).

10.4: Bache Co. stock report, September 30, 1982, value ($7,464.46).

10.5: University National Bank, checking account averaging $5,000, and $10,000

1/ Shopping Center business property.

C.D., 5/26/81.

10.6: First Chicago T-Rate C.D.s, ($15,014.17), 6/83 ($13,216).

10.7: State of Israel bond, face value $100, November, 1973.

10.8: Consolidated Unit Investment Trust and Accumulation Program, March 15, 1983, ($741.78).

10.9: Merrill Lynch account June 24, 1983, ($35,269.00) and bond due October, 1997, ($5,161.11).

10.10: Boatmen's National Bank of St. Louis, checking account, ($870.57).

10.11: Boatmen's National Bank of St. Louis, C. D. for ($10,000).

10.12: Continental-Illinois National Bank, ($25,000).

10.13: Hyde Park Bank, C.D. ($10,000).

10.14: Allanson Associates, Ltd., ($5,290).

10.15: Michigan Avenue National Bank, C.D. Feb. 4, 1983, ($16,200.00).

10.16: Account receivable from Richard Rosenbaum ($11,000).

10.17: Exchange National Bank ($140.00).

10.18: Office equipment and inventory of optometry practice ($3,000).

10.19: Hyde Park Federal ($941.00).

10.20: 1979 Buick automobile ($2,750).

10.21: Furniture, furnishings, appliances, paintings, clothing and personal effects ($2,000.00).

10.22: Stein Roe & Farnham Bond Fund ($50,443.00).

10.23: Rosenbaum optometry practice - value minimal.

10.24: American Optometric Association Retirement Fund (gross value before income taxes payable on distribution ($104,000.00), and First National Bank of Chicago IRA account ($2,432.00) (Par. 16 infra).

10.25: Other property supposedly owned by petitioner has been alluded to in the

trial of this cause but has not been established by competent evidence; the court finds from the evidence presented that those assets are inconsequential in view of petitioner's overall total accumulated asset picture and the conclusion, stated below, that he should retain most of these assets acquired and accumulated by him alone through his sole efforts and in spite of hinderance from respondent.

11. Property owned jointly by the parties includes the Keystone Custodian Funds having an approximate market value $50,000; over the years petitioner has paid the income tax liability for income on Keystone and, perhaps, an interest in Amalgamated Bank account ($2,323.57) (Par. 8.6 supra).

12. Petitioner is presently 70½ years of age and appears to be in reasonably good health.

13. Respondent is 62 years of age and

notwithstanding her claims of infirmities, appears to be in reasonably good health, traveling approximately 20 miles each way from Rogers Park to Hyde Park on public buses many times during the year and almost weekly in summer. The court notes her rigorous and vigorous representation of herself and her own interest in this case before the court for the past one and one-half years.

14. Respondent, upon her retirement, will be the beneficiary of the Teachers' Retirement System Pension Fund and will receive about $160.00 per month and will be eligible for Social Security benefits as a divorced person and at age 65 will be receiving over $400 per month for Social Security benefits.

15. Respondent has acquired through two inheritances, and as a result of the division of property in the partition suit and the investment of these funds,

the approximate sum of $66,000.00 considered herein as her separate property.

16. Petitioner is the current recipient of a pension from the European Pension Fund which he earned prior to the marriage of the parties during the beginning of World War II. This is approximately $300 per month which he has been receiving since 1977. The accumulated amount of this pension, deemed non-marital property, is about $20,000, plus accumulated interest thereon. Petitioner also receives (a) the maximum social security benefits of roughly $828 per month, and (b) will be receiving a pension from the American Optometric Association Retirement Fund (AOA) valued at the time of trial at approximately $104,000.00 but which is taxable to him and must be paid out to him over a period of ten years, plus (c) a taxable IRA account at the First National Bank of Chicago, established in 1981, having an

approximate value of $2,432.00. Both the AOA and IRA were acquired by petitioner on his earnings subsequent to the separation of the parties in 1965.

17. The net current income of the petitioner for the years 1980 through 1982 based upon the testimony and his federal income tax returns admitted into evidence is approximately $16,000 per year, after payment of federal and state taxes and pension contributions.

18. The net income of the respondent for the years 1980 through 1982 based upon her testimony and her federal and state income tax returns introduced into evidence is, after taxes, approximately $11,775.00.

19. The optometry practice of the petitioner has a minor, or minimal value. Petitioner testified early in the trial that he has been trying to sell his practice but without success. In view

of petitioner's age and his income from pensions, the court finds his testimony that he desires to sell his practice and retire believable but the court concludes that the practice of the petitioner is essentially a personal service business having only a minimal value to the average purchaser. See In re Marriage of Greenberg, 102 Ill. App. 3d 938; 429 N.E. 2d 1335 (1st Dist. 1981).

20. Since 1965 respondent has maintained the standard of living which she presently has today. Her standard of living has not diminished throughout the years of separation, nor has it improved. Respondent has substantial savings from her personal acquisitions and through inheritances. The standard of living of the parties at the time of separation does not appear to be materially different than respondent's present living standard.

21. Other than mortgage encumbrances on the cooperative ownership of the petitioner in the Promontory Apartments Trust and a mortgage on 53rd Woodlawn-Kimbark Shopping Center, a debt of $4,000 to the Internal Revenue Service, substantial attorneys' fees paid and to be paid in an amount in excess of $10,000, and respondent's dental bill, there are no material marital debts at this time.

22. From the above properties, that which is clearly non-marital includes the Talman Home Federal accounts held as custodian for two children (par.8.1). Other property held by petitioner as Trustee for children -- American National, Bank of Commerce and Industry, Calumet National Bank, Boatmen's National Bank (pars. 8.2, 8.3, 8.4, 8.5 and 8.6) is found to be marital for purposes of this judgment. However, assets from partition proceedings of about $46,711.48, which includes funds on

deposit at Calumet National Bank and part of Stein Roe & Farnham account, which are included in paragraphs 8.4 and 9 are non-marital and belong to petitioner, as do pension benefits commingled in petitioner's own accounts of about $20,000 from his European Pension (par. 16 supra) and the Britiannia Building Society account with balance of 892.34 British pounds.

23. Respondent has about $66,000 of non-marital property acquired by her either through inheritance or as a result of the prior division of the assets of the parties in the partition proceedings, and interest earned thereon. (Par. 15 supra).

CONCLUSIONS OF LAW

1. Under Section 503 of the Illinois Marriage and issolution of Marriage Act (IMDMA), the court concludes that the property described in paragraphs 22 and

23, supra, is non-marital, since it was acquired by gift, bequests, devise or descent under Section 503(a)(1) or prior to marriage 503(a)(3), or has been acquired by judgment, under 503(a)(7).

2. In dividing the marital property of the parties, the court has examined the facts and circumstances in this case as it relates to the guidelines set forth in Section 503(d), with particular emphasis on Sections (1) (2) (3) (7) (10) and (11); however all of the subsections of (d) are part of the considerations of this court in reaching its conclusions.

3. Each party will retain all non-marital assets as his or her own property.

4. Those assets being held by petitioner as custodian for the children are deemed to be assets of the children and not of the petitioner. The court notes that of those assets held by the petitioner as trustee for the children, which

includes part of the deposits at the Calumet National Bank and Stein Roe & Farnham Bond Fund totaling approximately $46,711.43, are non-marital assets, being the result of the judgment for partition, and the interest earned on those funds is likewise non-marital. (For purposes of division of property, all other assets held by petitioner as trustee for one or more of the children are found to be marital). Further, about $20,000 of petitioner's assets are the accumulation of the German Pension Fund proceeds and are non-marital.

5. This case is most unusual as a consequence of the long separation of the parties of approximately 18 years which is strikingly similar, while not quite the same, to actual legal separation under Illinois law, and the acquisition of assets by the petitioner without any significant contribution on the part of the respondent. Quite to the contrary, the

detrimental effect of the respondent's conduct on the petitioner's acquisition and retention of assets, together with harassment and mental stress, embarrassment and anguish of petitioner, has hindered and frustrated the accumulation of assets by petitioner.

6. Since the marital assets of the parties at the time of the separation were relatively small, and the joint tenancy property of the parties will give each of the parties $25,000 of Keystone Fund Stock, the court is confronted with either a division of assets by the transfer of funds from the petitioner to the respondent, or, in the alternative, or in addition, permanent maintenance to the respondent for the remaining years of her life. The court notes that the respondent is near the age of retirement so that she will no longer be earning the income heretofore received as a school teacher by the

Chicago Board of Education, but that upon the conclusion of this litigation, she will have significantly more time in which to earn a living from teaching or from some other endeavor. Respondent will also be receiving a pension from the Teachers' Retirement System of $160.00 per month or $1,920.00 per year. The court also observes that the respondent has, and will have by virtue of this judgment, assets approaching $150,000, and that she has in the past two years according to her Federal Income tax returns earned approximately $6,500.00 a year from unearned income which the court reasonably anticipates will continue in the future. Upon the conclusion of this proceeding, one half of the Keystone Fund stock and the Amalgamated Bank account, and the interest which will be earned thereon, will inure to the respondent. This should give her additional income at 10% per

annum of approximately $2,500.00, thus placing the combined unearned and pension income of the respondent at about $11,000 a year without an award of property upon which she can earn further income and the further order of permanent maintenance.

7. It is concluded that the respondent has not materially improved upon her standard of living since the separation of the parties in 1965 and also since the sale of the marital home through the partition proceedings in 1977 and 1978.

8. Petitioner shall make the respondent the irrevocable beneficiary of two of his life insurance policies, one with Mutual Benefit for $5,000 and the other with New England Life for $10,000, so that in the event of his death, respondent will have additional assets. Petitioner shall pay the premiums on these policies. It is noted that the petitioner's life expectancy at age 70 is substantially less

than the respondent's at age 62.

9. In view of the substantial assets of the petitioner, the exact amount of which cannot be precisely determined in part due to the length of these proceedings and the fluctuating asset values at various times over the months of trial and the minimal contribution of respondent, petitioner is directed to turn over to the respondent a sum of money which will add to her capital and compensate her for any contribution she has made to this marriage prior to the separation of the parties in the Fall of 1965, in the amount of approximately twenty percent of marital assets in his name or control of $60,000.00.

10. In addition, because these assets may not be sufficient for the respondent to maintain the standard of living to which she has become accustomed and to pay her own medical insurance, and in

light of her health, age, and reasonable needs (although the court concludes that she should receive at least $14,000 a year of income frpm her investments assuming that the respondent maintains the same diligent investment policy for her funds and moneys awarded herein that she seens to have followed in the past), petitioner shall pay to the respondent $500.00 per month on the first of each month for four years (or forty-eight months) and $350.00 per month thereafter until her death, or that of petitioner, as and for permanent maintenance which shall be taxable to her and deductible to petitioner on his income tax returns. All motions for temporary and for permanent maintenance and for payment of dental and other bills will be denied.

11. The parties have also acquired certain household furniture, furnishings, jewelry and personal effects. While the

values of these items has not been precisely proven, it appears that the retention of such items by each party is fair and reasonable.

12. That the court has considered all the facts and circumstances present in this case in accordance with Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That a Judgment Of Dissolution of Marriage be and the same is hereby awarded both of the parties hereto and, accordingly, the bonds of matrimony previously existing between petitioner, KURT ROSENBAUM, and respondent, JEAN ROSENBAUM, shall be and the same are hereby dissolved, extinguished and forever terminated, and the parties are and each of them is free from the obligations thereof.

B. That petitioner, KURT ROSENBAUM, is hereby assigned and awarded the following as his separate, non-marital property having the approximate evaluations indicated, all of which property is in the name of petitioner solely or with one or more of the children of the parties, and is awarded all right, title and interest therein:

(1) The 1979 Buick automobile in his possession and control valued at $2,750.

(2) All of the household furniture, furnishings, appliances, fixtures and contents of the residence located at 5532 South Shore Drive, Chicago, Illinois.

(3) Shares in cooperative at 1200 East 53rd Street, Chicago, Illinois, $18,000.

(4) Apartment 9F, co-op at 5532 South Shore Drive, Chicago, Cook County, Illinois, $37,500.00.

(5) NCR Corp., 11.11 shares common stock, value $1,375.

(6) Bache Co. stock report, September 30, 1982, value $7,464.46.

(7) University National Bank, checking account averaging $5,000, and $10,000 C.D. 5/26/81.

(8) First Chicago T-Rate C.D., $15,014.17, 6/83.

(9) State of Israel bond, face value $100, November 1973.

(10) Consolidated Unit Investment Trust and Accumulation Program, March 15, 1983, $741.78.

(11) Merrill Lynch account, June 24, 1983, $35,269.00 and bond due October, 1997 for $5,161.11.

(12) Boatmen's National Bank of St. Louis, checking account, $870.57.

(13) Boatmen's National Bank of St. Louis, C.D. for $10,000.

(14) Continental Illinois National Bank, $25,000.

(15) Hyde Park Bank, C.D. $10,000.

(16) Allanson Associates, Ltd., $5,290.

(17) Michigan Avenue National Bank C.D. Feb. 4, 1983, $16,200.00.

(18) Account receivable from Richard Rosenbaum, $11,000.

(19) Exchange National Bank, $140.

(20) Office equipment and inventory of optometry practice, $3,000.

(21) Hyde Park Federal, $941.

(22) Stein Roe & Farnham Bond Fund, $50,443.

(23) Rosenbaum optometry practice - value of minimal.

(24) American National Bank & Trust Company of Chicago, petitioner Trustee for Jody Rosenbaum, $22,337.38.

(25) Bank of Commerce & Industry, petitioner Trustee for Jody, Richard and Jay Rosenbaum, $11,114.00.

(26) Calumet National Bank, petitioner, as Trustee for Jay Rosenbaum, Richard Rosenbaum, and Jody Rosenbaum,

Jan. 10, 1983, $30,000.

(27) The Boatmen's National Bank of St. Louis, petitioner Trustee for Jay, Richard or Jody Rosenbaum, Feb. 18, 1983, $65,268.22.

(28) American Optometric Association Retirement Fund and First National Bank of Chicago IRA account.

(29) First National Bank of Chicago IRA account.

(30) Any other stocks, bonds, bank accounts, pensions, IRA account, or certificates of deposit in the name of petitioner and acquired after the separation of the parties.

C. That the respondent, JEAN ROSENBAUM, be and she is hereby awarded as her sole and separate property all property and personal effects presently in her possession and control (including stocks, bonds, certificates of deposit and bank accounts), together with her

pension in the Teacher's Retirement System.

D. That petitioner, KURT ROSENBAUM, shall be solely responsible for the payment of the following outstanding liabilities, and he shall indemnify and hold respondent absolutely safe and harmless therefrom:

(1) Any lien or mortgage on the property at 5532 South Shore Drive, Chicago, Illinois.

(2) Any lien or mortgage on the cooperative at 1200 East 53rd Street, Chicago, Illinois.

(3) Petitioner's attorneys' fees and costs incurred herein.

(4) Any Federal or State of Illinois income tax liability on his separate returns.

E. That commencing on December 1, 1983, petitioner, KURT ROSENBAUM, shall pay the respondent, JEAN ROSENBAUM, the unallocated sum of $500.00 per month for four years and $350.00 per month there-

after until death of either petitioner or respondent as and for his contribution to the support, reasonable needs and maintenance of respondent until she remarries or until the death of either petitioner or respondent.

F. That petitioner shall maintain $10,000 and $5,000 insurance policies on his life, and he shall designate the respondent as irrevocable beneficiary and pay all premiums for these policies and exhibit proof of payment to respondent each year.

G. The parties shall divide equally the Keystone Fund stock and the Amalgamated Bank account in their joint joint names or as joint trustees for the children.

H. Petitioner shall pay to respondent within 30 days of the judgment herein the sum of $60,000 from his separate property, from which sum respondent

shall be responsible for her dental and other bills incurred by her.

I. All pending motions of respondent for temporary and permanent maintenance, for payment of dental and other bills, for further discovery, and other pending open motions are denied (as).[2]

K. Each of the parties is hereby ordered to execute such deeds, assignments or other documents which may be necessary or required to effectively vest sole and exclusive title in any of the above property in the other party.

L. That any further right of claim by either party against the other for spousal maintenance and support be and the same are hereby barred, extinguished

2/ There is no paragraph (J) in the Judgment of Dissolution of Marriage.

and forever terminated.

K. That this court retains continuing jurisdiction of the parties hereto and the subject matter hereof for purpose of enforcing the provisions of this Judgment.[3]

DATED:

ENTER:

Daniel Ryan
JUDGE

No. 83 D 1541906

[3]/ There are two paragraphs "K" in the Judgment of Dissolution of Marriage.

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.

COUNTY DEPT. DOMESTIC RELATIONS DIV.

IN RE THE MARRIAGE OF	)	
	)	
KURT ROSENBAUM,	)	
	)	
Petitioner	)	
	)	
and	)	NO. 81 D 22050
	)	
JEAN ROSENBAUM,	)	
	)	
Respondent,	)	
	)	C O P Y
acting Pro Se	)	

ORDER

This cause coming on to be heard this day upon Jean Rosenbaum, Respondent's MOTION FOR DECLARATORY JUDGMENT, and the Court having been advised in the premises; IT IS HEREBY ORDERED:

1. The Motion for Declaratory Judgment is denied.

2. The next hearing date is set for October 1, 1982 at 9:30 AM.

ENTERED: Sept. 8, 1982

JUDGE RYAN

A.(103)

IN THE CIRCUIT COURT OF COOK COUNTY, ILL.

COUNTY DEPT., DOMESTIC RELATIONS DIV.

IN RE THE MARRIAGE OF	)	
	)	
KURT ROSENBAUM,	)	
	)	
Petitioner	)	
	)	
and	)	NO. 81 D 22050
	)	
JEAN ROSENBAUM,	)	
	)	C O P Y
Respondent,	)	
	)	
acting Pro Se	)	

STIPULATION

This cause coming on to be heard this 10th day of March, 1983 upon trial, the parties hereto stipulate as follows:

The City Savings Association has paid directly to Kurt Rosenbaum all sums mentioned "paid" in its communications to Kurt Rosenbaum and Jean Rosenbaum, and he has received same.

(Signature)
Edward A. Berman, acting for Petitioner

(Signature)
Jean Rosenbaum, Respondent, Pro Se

ENTERED: March 15, 1983, Judge Ryan.

U. S. CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probably cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V.

No person shall be held to answer for a

capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X.

The powers not delegated to the United States by the Constitution, nor prohibited

by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES INVOLVED.

The following Federal Statutes pertain to Social Security benefits accruing to ..

"42 USCA 402(b)(1). The wife (as defined in section 416(b) of this title) and every divorcedwife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife --"*

*NOTE: The divorced Wife must meet certain specified criteria; however a 1985 recent Amendment to the foregoing states:

"42 USCA 402(5)(A). Notwithstanding the preceding provision of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife --

(i) meets the requirements of sub-paragraphs (A) through (D) of paragraph (1) and
(ii) has been divorced from such in-

sured individual for not less than two years, shall be entitled to a wife's insurance benefits under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

"(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual."

"42 USCA 416, (c)(1). The term 'divorced wife' means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective."

STATE OF ILLINOIS STATUTES INVOLVED.

Ill. Rev. Stat. (1983), Ch. 40.

(RE: P.A. 83-954)

"Sec. 401. Dissolution of Marriage.

The court shall enter a judgment of dissolution of marriage if at the time the action was commenced, one of the spouses was a resident of this State or was stationed in this State while a member of the armed services, and the residence or military presence had been maintained for 90 days next preceding the commencement of the action or the making of the finding; and if one of the following grounds for dissolution has been proved:

"(1) That without cause or provocation by the petitioner, the respondent was at the time of such marriage, and continues to be naturally impotent; or the respondent had a wife or husband living at the time of such marriage; or the respondent had committed adultery subsequent to the marriage, or has wilfully deserted or absented himself or herself from the petitioner for the space of one year, including any period during which litigation may have pended between the spouses for dissolution of marriage, or legal separation, or has been guilty of habitual drunkenness for the space of 2 years, or has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years, or has attempted the life of the other by poison or other

means showing malice, or has been guilty of extreme and repeated physical or mental cruelty, or has been convicted of a felony or other infamous crime or has infected the other with a communicable venereal disease. 'Excessive use of addictive drugs', as used in this Section, refers to use of an addictive drug by a person when using the drug becomes a controlling or a dominant purpose of his life; or

"(2) That the spouses have lived separate and apart for a continuous period in excess of two years and irreconcilable differences have caused the irretrievable breakdown of the marriage, and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not in the best interests of the family; provided that if the spouses have lived separate and apart for a continuous period of not less than 6 months next preceding the entry of the judgment dissolving the marriage, as evidenced by testimony or affidavits of the spouses, the requirement herein of living separate and apart for a continuous period in excess of 2 years may be waived upon written stipulation of both spouses filed with the clerk of the court.

"Such judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property. The court may bifurcate the judgment for dissolution and

reserve questions of child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property regardless of whether (i) the court has in personem jurisdiction over the respondent, or (ii) one of the parties would be unable to pay child support or maintenance if so ordered, or (iii) the court has set aside an adequate fund for child support pursuant to subsection (d) of Section 503, or (iv) the child or children of the parties do not reside with either parent.

"The death of a party subsequent to entry of judgment for dissolution but before judgment on reserved issues shall not abate the proceedings.

"If any provision of this Section or application thereof shall be adjudged unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect or invalidate any other provision or application of this Section, which shall remain in full force and effect."

(Again amended later by several other amendments.)

"Sec. 402. Legal Separation. (a) Any person living separate and apart from his or her spouse without fault may have a remedy for reasonable support and maintenance while they so live apart.

"(b) Such action shall be brought in the circuit court of the county in which the respondent resides or in which the parties last resided together as husband and wife. In the event the respondent cannot be found within the State, the action may be brought in the circuit court of the county in which the petitioner resides. Commencement of the action, temporary relief and trials shall be the same as in actions for dissolution of marriage.

"(c) A proceeding or judgment for legal separation shall not bar either party from instituting an action for dissolution of marriage, and if the party so moving has met the requirements of Section 401, a judgment for dissolution shall be granted. (Amended by P.A. 82-716, §1, eff. July 1, 1982.)"

"Sec. 503. Disposition of Property. (d) In a proceeding for dissolution of marriage or declaration of invalidity of of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non-marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

(1) the contribution or dissipation of each party in the acquisition, preservation, or depreciation or appreciation in value, of the marital and non-marital property, including the contribution of a spouse as a homemaker or to the family unit;

(2) the value of the property set apart to each spouse;

(3) the duration of the marriage;

(4) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(5) any obligations and rights arising from a prior marriage of either party;

(6) any antenuptial agreement of the parties;

(7) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(8) the custodial provisions for any children;

(9) whether the apportionment is in lieu of or in addition to maintenance;

(10) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(11) the tax consequences of the property division upon the respective economic circumstances of the parties.

(e) Each spouse has a species of common ownership in the marital property which vests at the time dissolution proceedings are commenced and continues only during pendency of the action. Any such interest in marital property shall not encumber that property so as to restrict its transfer, assignment or conveyance by the title holder unless such title holder is specifically enjoined from making such transfer, assignment or conveyance.

(f) A transfer of marital property from one spouse to another in acknowledgement of their respective contributions to the accumulated marital estate, either by agreement or by order of court, is a division of the common ownership of marital property. Such transfer is not a taxable event.

(g) The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent or incompetent child of the parties.

(h) The court may make such judgments affecting the marital property as may be just and may enforce such

judgment by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court.

(i) Unless specifically directed by a reviewing court, the court shall not on remand consider any increase or decrease in the value of any 'marital' or 'non-marital' property occurring since the assessment of such property at the original trial or hearing, but shall use only that assessment made at the original trial or hearing."

"Amended by P.A.82-783, Art. III, § 23, eff. July 13, 1982; P.A. 83-129, § 1, eff. August 19, 1983; P.A. 83-388, § 36, eff. Sept. 16, 1983; P.A. 83-563, § 1, eff. Jan. 1, 1984; P.A. 83-564, § 1, eff. Jan. 1, 1984."

"Sec. 1001. Married women may sue and be sued--Attachment or judgment. § 1. A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried; provided, that neither husband nor wife may sue the other for a tort to the person committed during coverture, other than an intentional tort. ...."

"Sec. 1007. A married woman may receive, use and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors."

EXCERPT FROM ILLINOIS OFFICIAL MICROFILM COPY OF TRANSCRIPT OF PROCEEDINGS BEFORE SENATE COMMITTEE RE P. A. 83-954.

(Third Reading) 5/27/83

SENATOR MAROVITZ: "What happens today ... they have to file a complaint putting the fault grounds ... specifying the fault grounds, then they have to testify in open court with a court reporter as to what specific fault grounds there are. In many cases, they perjure themselves on the stand in order to find fault grounds, when in fact, they just want to get out. This (P. A. 83-954) would allow people to .. to amicably part without saying, I have done nothing wrong in this marriage, my spouse has done everything wrong in this marriage. This doesn't affect property at all or property distribution at all."

PARTIAL TRANSCRIPT OF A PROCEEDING BEFORE PRE-TRIAL JUDGE BUCKLEY, REPORT OF PROCEEDINGS, pp. 45-49.

Mrs. Rosenbaum: Q. "When your wife calls do you listen patiently to what she says or do you constantly interrupt so she cannot get a word in edgewise, express her thoughts, and then hang up so she is forced to call in order to make some kind of point or ask some kind of question? ....."

Kurt Rosenbaum: A. "If the question is relevant to whatever happened I would answer the questions ....."

Mrs. Rosenbaum: Q."Is your wife employed?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Are you aware that your wife is employed and there is one phone available to her usually; in school she is confined to a classroom most of the time?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Who decides if what she says is relevant or not?"

Kurt Rosenbaum: A. "I decide, obviously."

Mrs. Rosenbaum: Q. "Is she unable to make any decisions with respect to anything by herself?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Half the time you don't even know what the question is?

Kurt Rosenbaum: A. "Yes." OBJECTION.

Mrs. Rosenbaum: Q. Well, how can you know if it is legitimate or not if you don't listen?" OBJECTION.

Court: "Go on to another --"

Mrs. Rosenbaum: Q. "Has your wife told you that she has encountered an individual in the anteroom of the court, or one in the office of the Board of Education; that what is requested is that she ask you certain questions which they hint at but do not actually --?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Have you for many years labeled any questions or request on your wife's part relating to family business, none of her business and totally irrelevant, and goofy and crazy, and the whole bit?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Are you aware of your wife's physical condition?"

Kurt Rosenbaum: A. "Yes, you mentioned it several times."

Mrs. Rosenbaum: Q. "What is your wife's physical condition?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Have you instructed your employees to hang up on your wife

when she calls and leaves a message?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "How many times since you have departed from the family home have you responded to the messages you should call her?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "I also wish to ask does your wife have your home telephone number to discuss family matters with you?"

Court: OBJECTION SUSTAINED.

Mrs. Rosenbaum: Q. "Do you believe a mother and wife should be entitled to get information about the family, or reports sometimes?"

Court: "Where is this on the trial call? ..... I am going to enter a preliminary injunction preventing you from phoning him at the office."

Mrs. Rosenbaum: My daughter has just been in the hospital; my son newly married. He didn't tell me about it. I am entitled to certain family information. He hasn't shown me the wedding pictures ....".

Court: "And I am telling you, you are enjoined from calling him at the office and it you harass him, I will send you to jail. ....."

Mrs. Rosenbaum: "May I say one thing?"

Court: "No, call the next case."

IN RE MARRIAGE OF GREENBERG

(102 Ill. App. 3d 938)

Excerpts from Headnotes

(First District, 1981)

Headnote 1: Trial court's award of temporary maintenance of 20 per cent of husband's net monthly earnings to wife was not an abuse of discretion in marriage dissolution proceedings upon consideration of the fact that wife was earning far less than husband and living at standard below husband and below standard which she enjoyed during marriage, albeit she was neither destitute or unemployed.

Headnote 2: Wife's affidavit detailing projected rather than actual expenses and her ownership of stock did not demonstrate discrepancy or establish financial independence as would render temporary maintenance award abuse of discretion, in marriage dissolution

proceedings in which trial judge was in best position to determine credibility of wife's contention that estimated expenses would shortly become actual.

Headnote 5: Trial court's award to wife of over half of parties' marital property manifested proper exercise of discretion in marriage dissolution proceedings as fair and reasonable apportionment in accord with statutory guidelines under evidence (Ill. Rev. Stat. 1979, ch. 40, par. 503).

Headnote 7: Trial court's order that father pay support and education expenses for 20-year-old daughter, notwithstanding her corporate stock ownership, was not abuse of discretion in marriage dissolution proceedings, where proofs established father's superior financial position to either mother or daughter ..... .

KURT ROSENBAUM, Plaintiff-Appellee, v. JEAN ROSENBAUM, Defendant-Appellant

(38 Ill. App. 3d 1, 1st Dist. 1976)

Excerpts from Headnotes

Headnote 2: In divorce case on ground of mental cruelty, whether or not there was provocation is relevant in determining whether plaintiff proves his case and where grounds for divorce are physical or mental cruelty, provocation is not affirmative defense and its presence is proof that element of plaintiff's prima facie case, namely cruelty, does not exist.

Headnote 3: Unilateral judgments of plaintiff disclaiming responsibility for wife's medical bills and telling her to pay for her own expenses because he would no longer contribute to her support were not justified by evidence in record.

Headnote 5: Death of marriage, and fact that parties would never again live as

husband and wife, do not entitle either to a divorce.

Headnote 7: In law, each count of complaint is separate and should in itself state a complete cause of action.

Headnote 8: Where complaint contains separate counts, there should be findings as to each count with separate judgment entered on each.

QUOTATION FROM ROSENBAUM V. ROSENBAUM (cited supra), pp. 8-9. etc.

"It was also proved that in his first divorce suit, the one decided against him, Dr. Rosenbaum had alleged that he was living separate and apart from his wife as a single man without fault on his part. In the trial of this case, his lawyer conceded that the first suit adjudicated all the issues between the parties. One of the issues in that case was whether, as he had alleged, Dr. Rosenbaum was living separate from his wife without fault on his part. The same issue was submitted in this case when Dr. Rosenbaum made the same allegation and it was denied by Mrs. Rosenbaum. Therefore, from his explanation of why he left his home, and from the conceded effect of the prior adjudication, the question arises whether Dr. Rosenbaum left his family without a valid reason, and

thus provoked the acts of his wife about which he now complains. This question must be answered from the evidence in the record bearing in mind that he had raised it before in a case that went against him (citation). In a divorce case, whether there was or was not provocation is relevant in determining whether a plaintiff proves his case .... A divorce suit plaintiff who charges mental cruelty must allege and prove that he did not provoke the acts and conduct about which he complains.

Page 10. "After the children left their mother and went to live with him, Dr. Rosenbaum decided that he was no longer responsible for any part of the utility bills on the family home. He wrote a letter to his wife's doctor disclaiming responsibility for her medical bills. He wrote a note to Mrs. Rosenbaum telling her that she had to pay for her own expenses because he would no longer contribute to her support. We have examined the evidence, and find no justification for these unilateral judgments by Dr. Rosenbaum concerning his wife's duty and ability to bear part of the family expenses at one time and all of her support at another. It is true she was a part-time teacher and had some money of her own. But the duty of a husband to support his wife is imposed by law, Lyons v. Schanbacher, 316 Ill. 569; Vock v. Vock, 305 Ill. 432.

Page 13. "We are convinced that Dr. Rosenbaum did not prove .... lack of provocation. From his testimony .... he left his family without a valid reason. The institution of marriage would not exist in our society, if every husband were free to decide for himself that preservation of his sanity, whatever that means, requires that he leave his wife and children. ..... His income has progressively increased. His interests in matters vocational and avocational have not changed or diminished ..... From everything she (Wife) has filed here and below, there exudes a deep sense of indignation of her husband's desertion of her, his construction of her reactive conduct as mental cruelty, and his success in using that construction to obtain a divorce on terms that deprive her of benefits she claims should be hers after 27 years of marriage. ..... Therefore, we conclude that the Judgment granting Dr. Rosenbaum a divorce on grounds of mental cruelty was contrary to the manifest weight of the evidence (citations)."

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT OF JEAN ROSENBAUM

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the petitioner, acting Pro Se in the aforestated cause, that she has read the foregoing APPENDIX to JURISDICTIONAL STATEMENT by her submitted for filing, that she knows the contents thereof, and the same is true in substance and in fact.

JEAN ROSENBAUM, Pro Se *
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 30th day of December, 1985.

Notary Public *

* See copy marked "Notarized Copy" for signatures.

The foregoing APPENDIX TO JURISDICTIONAL STATEMENT is respectfully submitted.

Jean Rosenbaum

JEAN ROSENBAUM, Appellant,
acting Pro Se *

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

* See copy marked "Notarized Copy" for original signatures, and notarization of APPENDIX TO JURISDICTIONAL STATEMENT, revised version.

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

AFFIDAVIT

JEAN ROSENBAUM, being first duly sworn upon oath, deposes and states she is the Appellant, acting Pro Se in the aforestated cause, that she has read the foregoing revised APPENDIX to JURISDICTIONAL STATEMENT by her subscribed, that she knows the contents thereof, and the same is true in substance and in fact.

She also states that the original APPENDIX to JURISDICTIONAL STATEMENT by her subscribed was timely-filed by United States Mail with Clerk of Supreme Court of the United States on December 31, 1985, and the copies thereof returned to her voluntarily for revision by the Clerk of that Court on January 7, 1986 (received

by her on January 13, 1986). Pursuant to Supreme Court Rule 33.7, filing is not deemed untimely if the revised version is returned within a reasonable period of time (21 days from January 7, 1986, according to the various Clerks of the Supreme Court of the United States).

Jean Rosenbaum
JEAN ROSENBAUM, Pro Se *

Subscribed and sworn to before me, a Notary Public of the State of Illinois, County of Cook, this 25th day of January, 1986.

Margaret E. Swanson
Notary Public *
My Commission Expires [illegible]

Jean Rosenbaum, Pro Se
1354 West Greenleaf Street
Chicago, Illinois 60626
973-6047 (312)

* See copy marked "Notarized Copy" for original signatures.